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Attorneys for Plaintiff
HUGO SLUIMER

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

HUGO SLUIMER,

Plaintiff,

v.

VERITY, INC., a corporation, and THE
VERITY INC. CHANGE IN CONTROL
AND SEVERANCE BENEFIT PLAN,

Defendants.

)
) Case No. C 081220 SI
)
) **DECLARATION OF KEITH EHRMAN**
) **IN SUPPORT OF PLAINTIFF'S**
) **MOTION FOR ATTORNEYS' FEES**
)

) Date: September 26, 2008
) Time: 9:00 a.m.
) Courtroom: 10, 19th Floor
) Before: Hon. Susan Illston
)

I, Keith Ehrman, declare as follows:

1. I am an attorney duly licensed to practice in the State of California and am one of

1 the attorneys for Plaintiff Hugo Sluimer. I have personal knowledge of the facts set forth below and
2 could competently testify as to those facts if called upon to do so.

3 2. I am a partner in the law firm of McGuinn, Hillsman & Palefsky, and have been an
4 attorney with that firm since 1986. I received my undergraduate degree from Stanford University
5 in 1978 and my law degree from the University of California at Berkeley in 1981. After clerking
6 for United States District Judge Irving Hill, I became a member of the California Bar in 1982. Since
7 1986, my practice has focused almost exclusively on the field of employment law. During my 22
8 years of specializing in employment law, I have represented hundreds of employees. I have been
9 a guest speaker and/or panel moderator on employment issues at conferences and seminars of the
10 California Employment Lawyers Association, the San Francisco Trial Lawyers Association and the
11 California Continuing Education of the Bar. On behalf of the National Employment Lawyers
12 Association, I have also written numerous *amicus curiae* briefs for presentation to the United States
13 Supreme Court, the California Supreme Court, various federal Courts of Appeal and the California
14 Court of Appeal. Both I and my firm are rated "AV" by Martindale-Hubbell, which is the highest
15 rating obtainable. My firm has been consistently recognized as one of the top plaintiff's
16 employment firms in California.

17 3. My firm took Mr. Sluimer's case on a contingent fee basis. Therefore, since March
18 2007, my firm has received no compensation for our work. Furthermore, if Plaintiff does not
19 prevail in this case, my firm would receive no compensation from Plaintiff. Because this case
20 involved significant ERISA issues, I associated the firm of Rimac & Martin as co-counsel, since
21 they have expertise in that area. Rimac & Martin took this case on a contingent fee basis and has
22 worked on this matter since approximately September 2007 without compensation for any of the
23 work they have performed. If Plaintiff does not prevail in this case, Rimac & Martin will receive
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1 no compensation from Plaintiff.

2 4. Almost all of the work that I do is on a contingency basis. However, my current
3 hourly billing rate is \$450 per hour. I am familiar with hourly billing rates charged by attorneys
4 in the Bay Area, based upon my review of declarations filed in other cases seeking an award of
5 attorneys fees; based on surveys I have read of hourly billing rates in the Bay Area; and based on
6 discussions I have had with other attorneys in the Bay Area. Based on my familiarity with the
7 hourly rates charged by other Bay Area attorneys, it is my opinion and belief that my hourly billing
8 rate of \$450 is below the market rate for attorneys in the Bay Area with my experience.
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10 5. As of August 8, 2008, I had spent approximately 126.7 hours working on this case.
11 Attached as Exhibit A are time records reflecting the hours I worked on this matter. At an hourly
12 rate of \$450 per hour, this amounts to \$57,015. As set forth in the Declaration of my partner, Cliff
13 Palefsky, Mr. Palefsky spent approximately 7.3 hours working on this case. At his hourly rate of
14 \$610 per hour, this amounts to \$4,453. Thus, my law firm spent a total of 134 hours working on
15 this matter, and therefore seeks fees of \$61,468.
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17 6. Attached hereto as Exhibit B is a Declaration of Michael Rubin, who is widely
18 regarded as one of the top California attorneys in the field of employment law.
19

20 7. Attached hereto as Exhibit C is a Declaration of Steve Zieff, who is widely regarded
21 as one of the top California attorneys in the field of employment law.

22 8. Attached hereto as Exhibit D is an April 22, 2008 Declaration of Richard Pearl
23 which was filed with the Court in the case of *Jou Chau v. Starbucks*, California Superior Court Case
24 No. GIC-83925, in connection with a Motion for Attorneys Fees brought by plaintiff's counsel.
25 Plaintiff asks that the Court take judicial notice of Mr. Pearl's Declaration in the *Starbucks* case.
26 Mr. Pearl wrote the CEB book on California attorneys fees. In his Declaration, Mr. Pearl describes
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1 the hourly rates charged by approximately 25 law firms in California. In his Declaration, Mr. Pearl
2 also describes hourly rates awarded by various California courts in recent cases involving attorneys
3 fees awards. In his Declaration, Mr. Pearl also describes why attorneys who work on a contingency
4 fee basis should be entitled to a fee award at a higher hourly rate than attorneys who bill clients by
5 the hour and are paid by clients on a monthly basis.
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7 I declare under penalty of perjury that the foregoing is true and correct, and that this
8 Declaration was executed on August 20, 2008 in San Francisco, California.
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10 /s/
Keith Ehrman
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McGuinn Hillsman & Palefsky
Case: Sluimer v. Verity
Attorney Hours: Keith Ehrman

2007

<u>Date</u>	<u>Activity</u>	<u>Hours</u>
3/2/07	Review file	1.5
3/5/07	Communic. with client;	.2
3/6/07	Communic. with client; review additional client documents	.8
3/7/07	Communic. with client; review additional client documents	.6
3/8/07	Communic. with client; review additional client documents	1.2
3/9/07	Communic. with client; review additional client documents	.2
3/12/07	Communic. with client;	.1
3/13/07	Phone call with client; communic. with client; review additional client documents; research; prepare retainer	1.8
3/14/07	Communic. with client;	.3
3/22/07	T/C with Kanter; communic. with client; review documents	.4
3/23/07	Communic. with client	.1
3/24/07	Communic. with client	.1
4/6/07	Communic. with client; research; T/C with Kanter	.5
4/25/07	Communic. with client; review documents; prepare binder of documents for potential co-counsel	1.8
5/1/07	Communic. with client; prepare memo and binder for potential co-counsel; research	5.5
5/2/07	Communic. with client; prepare memo and binder for potential co-counsel	1.4
5/3/07	Communic. with client	.2
5/4/07	Communic. with client	.1
5/15/07	Communic. with client; T/C with potential co-counsel	.2
5/29/07	Communic. with client; T/C with potential co-counsel; research	1.5
6/6/07	Discussion with CP; research;	.5
6/11/07	T/C with potential co-counsel; research; communication with client; discussion with CP	1.0
6/14/07	Communic. with client; review additional client documents	.6
6/18/07	Communic. with client;	.2
6/24/07	Communic. with client; review additional client documents	.2
6/25/07	Communic. with client;	.2
6/24/07	Communic. with client; review additional client documents	.2

<u>Date</u>	<u>Activity</u>	<u>Hours</u>
7/17/07	Communic. with client;	.1
8/16/07	Communic. with client; review additional client documents	.2
8/17/07	Communic. with client; research	.5
8/31/07	T/C with potential co-counsel; communic. with client; draft memo and compile documents for evaluation by potential co-counsel	3.2
9/11/07	Communic. with client	.1
9/20/07	Communic. with client; communic. with co-counsel; T/C with co-counsel; discussion with CP; research	.8
9/21/07	Communic. with client; research; communic. with co-counsel	.8
9/22/07	Communic. with client; review additional client document	.1
9/24/07	Communic. with co-counsel; research; draft new retainer	.6
10/9/07	Communic. with co-counsel	.1
10/4/07	Communic. with client	.1
10/10/07	Communic. with client; discussion with CP	.2
10/12/07	T/C with client and co-counsel; communic. with client	.3
10/15/07	Review correspondence to company	.1
10/23/07	Review additional client documents; communic. with client	.8
11/19/08	Review documents produced by Defendants to co-counsel; communic. with co-counsel; discussion with CP	.4
12/4/07	Communic. with client; communic. with co-counsel	.3
12/5/07	Communic. with co-counsel	.1
12/11/07	Research; communic. with co-counsel	.3
2007 Total Hours:		30.5

2008

<u>Date</u>	<u>Activity</u>	<u>Hours</u>
1/9/08	Communic. with co-counsel; prepare documents for Complaint	.6
1/10/08	Communic. with co-counsel; prepare documents	.8
1/11/08	Review and analyze documents, prepare for Complaint; communic. with co-counsel	2.5
1/16/08	Communic. with client; review documents	.5
1/17/08	Communic. with client;	.2

<u>Date</u>	<u>Activity</u>	<u>Hours</u>
2/1/08	Review draft Complaint;	.8
2/3/08	Communic. with client re Complaint	.1
2/6/08	Communic. with co-counsel	.2
2/8/08	Revise Complaint	3.5
2/11/08	Revise Complaint	1.6
2/13/07	Revise Complaint; communic. with client re Complaint; communic. with co-counsel	1.0
2/14/08	Communic. with client; discussion with CP	.4
2/22/08	Edit Complaint	.6
2/26/08	Communic. with client; communication with Dutch lawyer communic. with co-counsel	.8
2/27/08	Communic. with Dutch lawyer; review documents	.8
2/28/08	Communic. with Dutch lawyer;	.4
3/3/08	Communic. with client; communication with Dutch lawyer; review Dutch pleadings	1.5
3/4/08	Communic. with client;	.2
3/13/08	Communic. with client; review additional client documents	.5
3/27/08	Review communic from opp counsel; communic with co-counsel	.4
3/28/08	T/C with CP and co-counsel; discuss case with CP	.4
4/3/08	Communic. with client and with Dutch lawyer; review Dutch pleadings	1.8
4/23/08	Communic. with co-counsel	.2
4/25/08	Review Def's s/j motion; Communic. with client;	1.5
4/28/08	Draft memo re Def's s/j motion; research; review additional documents from client	3.5
4/29/08	Draft memo re Def's s/j motion; communic. with client	1.8
5/1/08	Communic. with client; communic with co-counsel	.6
5/2/08	Communic with client; review additional documents from client; discussion with CP	.4
5/8/08	T/C with co-counsel and client; communic. with client and with co-counsel; compile documents for translation	.7
5/9/08	Communic. with client; work on getting translator	.3
5/10/08	Communic. with client	.1
5/12/08	Communic. with client; review additional client documents; work on getting translator	.6
5/13/08	Communic. with client	.1
5/15/08	Communic. with client; communic with co-counsel; compile documents for Rule 26 disclosure	4.8
5/16/08	Communic with co-counsel; compile documents for Rule 26	.6

<u>Date</u>	<u>Activity</u>	<u>Hours</u>
5/19/08	Communic. with client; T/C with Landers; communic. with Landers; review documents	1.2
5/20/08	Communic. with client and co-counsel and Dutch lawyer; review additional client documents; finalize Rule 26 documents	1.5
5/21/08	Revise Declaration for Landers; communic. with Landers	.3
5/22/08	Communic with co-counsel	.2
5/23/08	Communic with Dutch lawyer; review additional documents from lawyer; communic with co-counsel; prep for CMC and Rule 26	1.2
5/24/08	Communic. with client	.1
5/28/08	Communic with co-counsel re Rule 26 disclosures; prep Rule 26 info; review communic with client	1.5
5/29/08	Communic with client; research; communic with co-counsel	.3
5/30/08	Communic with Landers; communic with co-counsel	.2
6/2/08	Prep Landers subpoena, depo notice	.2
6/3/08	Communic with co-counsel; review documents	.3
6/4/08	Communic with co-counsel; T/C with Landers	.3
6/5/08	Communic with co-counsel	.1
6/6/08	Communic with co-counsel; research for s/j motion	.5
6/7/08	Review translations of Dutch pleadings	1.5
6/9/08	Review s/j pleadings; communic. with co-counsel	.8
6/10/08	Communic. with Dutch lawyer re s/j motion; communic with co-counsel	.5
6/11/08	Review communications with client and s/j pleadings; communic. with co-counsel	.8
6/12/08	Communic with Landers; review s/j pleadings; communic with co-counsel;	1.5
6/17/08	Communic with co-counsel; research for s/j motion opp	.8
6/18/08	Prep opposition to s/j motion	5.0
6/19/08	Communic with client; communic. with Dutch lawyer; prep opposition to s/j motion	8.0
6/20/08	Communic with Dutch lawyer; communic with co-counsel; prep opposition to s/j	6.5
6/21/08	T/C with Landers; communic with Landers; prep opposition to s/j brief; prep for Landers depo	7.5

<u>Date</u>	<u>Activity</u>	<u>Hours</u>
6/22/08	Prep opposition to s/j brief; prep for Landers depo	4.0
6/23/08	Take depo of Landers; meet with co-counsel; communic. with Dutch lawyer re declaration; revise opposition to s/j motion	5.5
6/24/08	Communic with Dutch lawyer; review Landers depo transcript; edit s/j opposition brief	4.2
6/25/08	Communic with Dutch lawyer; communicate with co-counsel; edit s/j opposition brief	1.4
6/26/08	Communic with Dutch lawyer; communication with co-counsel	.6
6/30/08	Review Def's opposition brief to Pl's s/j motion	.7
7/8/08	Review Reply briefs for s/j motion;	1.0
7/18/08	Prep for s/j hearing; attend s/j hearing; communicate with client	1.8
7/23/08	Review Court Order; communicate with co-counsel	.6
8/6/08	Prep for attorneys fees motion	.8
2008 Total Hours:		96.2

Total KE Hours: 126.7

Total CP Hours: 7.3

Total McGuinn Hillsman Fees: 126.7 x \$450/hr = \$57,015
7.3 x \$610/hr = \$ 4,453
\$61,468

McGuinn Hillsman Costs:

Delivery: \$ 98.18
Deposition: \$ 592.48
Witness Fee: \$ 85.75
Process Service: \$ 114.88
Translation Fees: \$ 4,944.75

Total McGuinn Hillsman Costs: \$5,836.04

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10 Attorneys for Plaintiff
HUGO SLUIMER
11
12

13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA

15 HUGO SLUIMER,
16

17 Plaintiff,

18 v.

19 VERITY, INC., a corporation, and THE
20 VERITY INC. CHANGE IN CONTROL
AND SEVERANCE BENEFIT PLAN,

21 Defendants.
22

)
) Case No. C 081220 SI
)
)

) **DECLARATION OF MICHAEL**
) **RUBIN IN SUPPORT OF**
) **PLAINTIFFS' MOTION FOR**
) **ATTORNEYS' FEES**
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23 INTRODUCTION

24 I, Michael Rubin, declare as follows:

25 1. I am a partner in the San Francisco law firm of Altshuler Berzon LLP and am a
26 member of the State Bar of California. I make this declaration in support of Plaintiffs' Motion
27 for Award of Attorneys' Fees and Costs. I have personal knowledge of the facts set forth below
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EXHIBIT

B

1 and could competently testify upon these matters if called upon to do so.

2 2. I graduated in 1977 from the Georgetown University Law Center, where I was an
3 Editor of the Georgetown Law Journal. I joined Altshuler Berzon LLP in 1981, after having
4 clerked for Judge Charles B. Renfrew of the United States District Court for the Northern District
5 of California (1978-79), Chief Judge James R. Browning of the United States Court of Appeals
6 for the Ninth Circuit (1979-80), and Justice William J. Brennan, Jr. of the United States Supreme
7 Court (1980-81). I specialize in complex civil litigation.

8 3. In 2002, I was named a "California Lawyer of the Year" by California Lawyer
9 magazine. In 2003, I was a co-recipient of the "Trial Lawyer of the Year" Award from the Trial
10 Lawyers for Public Justice. I have been listed for several years in "The Best Lawyers in
11 America" under the labor and employment category and am a member of the College of Labor
12 and Employment Attorneys. For the past several years, San Francisco Magazine has named me
13 among its Northern California "Super Lawyers" in the appellate practice area, and Lawdragon
14 Magazine has listed me as as a member of the "Lawdragon 500," as one of the 500 leading
15 plaintiffs' counsel, and as one of the 500 leading lawyers in the country. I am a former Vice-
16 Chair and Secretary of the Executive Board of the Litigation Committee of the Bar Association
17 of San Francisco.

18 4. Altshuler Berzon LLP frequently represents parties litigating court-awarded fee issues
19 in both state and federal courts. My partners and I have represented plaintiffs or defendants in
20 dozens of fees cases during the past 30 years. I have been a panelist or principal speaker
21 addressing attorneys' fee issues at many continuing education panels, have testified in court
22 about fees issues, and have been called upon as an expert in fees litigation to state my opinion as
23 to the appropriateness of fees and/or hourly rates requested by counsel in cases under state and
24 federal fee-shifting statutes.

25 5. During the course of my representation of my clients and other law firms in attorneys'
26 fees litigation in state and federal court, I have had considerable opportunity to familiarize myself
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1 with the hourly rates charged by Bay Area attorneys with experience and skill comparable to that
2 of plaintiff's counsel Cliff Palefsky and Keith Ehrman. I am also familiar with the hourly rates
3 awarded by state and federal courts in the cases in which my law firm has acted as fees counsel
4 during the past 30 years, as well as the rates awarded in many other fees cases by state and
5 federal courts in the Bay Area and throughout the country. In addition, I have reviewed many
6 published surveys of attorneys' billing rates, both in the Bay Area and elsewhere.

7 6. I understand that in this case, Cliff Palefsky (who was a classmate of mine at
8 Georgetown University Law Center, and who has been practicing law for more than 30 years) is
9 seeking fees based upon an hourly rate \$610 per hour and that Keith Ehrman (who has been
10 practicing law for 25 years) is seeking fees based upon an hourly rate of \$450 per hour. I have
11 worked as co-counsel with Cliff Palefsky and Keith Ehrman on many matters over the years, and
12 have consulted with them both on additional matters. I am very familiar with the high quality of
13 their legal work product, and have the greatest regard for their legal abilities. They are excellent
14 lawyers who devote themselves zealously and effectively to the representation of their legal
15 clients. I am also familiar with the excellent reputation that their law firm has in the legal
16 community.

17 7. The rates requested by Mr. Palefsky and Mr. Ehrman for their work in this case are
18 considerably below the market rate in the San Francisco Bay area for attorneys with similar skill,
19 experience, and reputation handling complex civil employment cases. By way of example, my
20 current market rate is \$750 per hour, and the hourly rate at my firm for associates who graduated
21 law school in 1999 is \$470.

22 I declare under penalty of perjury under the laws of the United States of America that the
23 foregoing is true and correct.

24 Executed this 20th day of August 2008, at San Francisco, California.

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26
27 /s/
Michael Rubin
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9 Attorneys for Plaintiff
10 HUGO SLUIMER

11
12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA

14 HUGO SLUIMER,

Case No. C 081220 SI

15 Plaintiff,

16 v.

17 VERITY, INC., a corporation, and THE
18 VERITY INC. CHANGE IN CONTROL
AND SEVERANCE BENEFIT PLAN,

**DECLARATION OF
STEVEN G. ZIEFF IN SUPPORT OF
PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES**

19 Defendants. /

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28 EXHIBIT C

1 I, Steven G. Zieff, declare as follows:

2 1. I make this declaration in support of Plaintiff's application for award of costs and
3 attorneys' fees. I am competent to testify to the matters declared below from my own
4 knowledge, except such as are declared upon information and belief, which I believe to be true.
5 If called upon to do so, I would and could so testify.

6 2. I am an attorney admitted to practice in the courts of the State of California and
7 before the United States District Courts for the Northern District of California, Eastern District of
8 California, and Central District California, as well as the United States Court of Appeals for the
9 Ninth Circuit.

10 3. I graduated from Boalt Hall School of Law in 1978 and was admitted to practice
11 in the State of California in that same year. Throughout most of my approximately thirty years
12 of law practice, I have specialized in employment law. I have represented plaintiffs in
13 employment actions in federal and California courts, including both numerous class actions and
14 individual cases. I have worked with two non-profit legal aid organizations, Solano County
15 Legal Assistance (1979-1981) and Legal Aid Society of San Mateo County (1981-86), as well as
16 in private practice for plaintiffs in employment matters from 1986 to the present. I have been a
17 named partner in my present firm (Rudy, Exelrod & Zieff, LLP) and its predecessors since 1989.
18 I have handled a full array of civil litigation including trials, arbitrations, negotiations,
19 mediations, class actions, and other legal proceedings in state and federal courts. I have done
20 extensive lecturing and writing on employment law matters, including speaking at national and
21 regional conferences sponsored by the American Bar Association, California Employment
22 Lawyers Association, National Employment Lawyers Association, The Rutter Group/California
23 Judges' Association, the California State Bar's Section on Labor and Employment, and the
24 Continuing Education of the Bar (CEB). I was named one of twenty-six California lawyers
25 whose "achievements in 2001 shaped the law, the profession, or the way the law affects industry
26 or the public" by *California Lawyer* magazine.
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4. It is our firm's practice to seek rates consistent with those charged by leading national and San Francisco firms for similar work. The hourly rates customarily charged by the lawyers in my law firm are as follows:

<u>Attorneys</u>	<u>Law school graduation</u>	<u>2008 hourly rate</u>
Alan B. Exelrod	1968	\$700
Steven G. Zieff	1978	\$700
David A. Lowe	1995	\$500
Patrice L. Goldman	1989	\$450
Kenneth J. Sugarman	1997	\$430
John T. Mullan	2002	\$395
M. Adrienne De Castro	2005	\$305

In my view, these rates are well within the rates charged in this community for comparable work.

5. I have been informed that Plaintiffs' attorneys are seeking compensation at the following 2008 rates:

	<u>Years of Experience</u>	<u>Hourly Rate</u>
Cliff Palefsky	31	\$610
Keith Ehrman	25	\$450

6. Both Cliff Palefsky and Keith Ehrman have well-deserved reputations for doing first-rate legal work. I have seen work done by their law firm and know it to be excellent.

7. Based on my experience with and knowledge of billing practices in California and particularly in the San Francisco area, I can state that the hourly rates requested for Mr. Palefsky and Mr. Ehrman in this matter are well within the range of rates charged by other California firms for lawyers of similar years of practice who are knowledgeable and experienced in employment cases.

1 I declare under penalty of perjury under the laws of the United States and of the State of
2 California that the foregoing is true and correct.

3 Executed this 20th day of August, 2008, at San Francisco, California.
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6 /s/
Steven G. Zieff

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Attorneys for Plaintiff and the Class

16 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 COUNTY OF SAN DIEGO

18 JOU CHAU, ON BEHALF OF HIMSELF AND
19 ALL OTHERS SIMILARLY SITUATED AND
ON BEHALF OF THE GENERAL PUBLIC AS
20 A PRIVATE ATTORNEY GENERAL;

21 Plaintiffs,

22 vs.

23 STARBUCKS CORPORATION; AND DOES 1-
24 100

Defendants.

Case No. GIC 836925

**DECLARATION OF RICHARD M. PEARL
IN SUPPORT OF PLAINTIFFS' MOTION
FOR AWARD OF STATUTORY
ATTORNEYS' FEES**

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28 EXHIBIT D

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1 I, Richard M. Pearl, hereby declare as follows:

2 1. I am a member in good standing of the California State Bar. I make this declaration
3 of my personal knowledge and could testify thereto if called as a witness. I have been asked by
4 Plaintiffs' counsel to provide my opinion regarding the reasonableness of the hourly rates they are
5 claiming for the time spent on the litigation of this case. They have also asked me to provide my
6 opinion about how the legal market place accounts for contingent risk.

7 2. I am a 1969 graduate of Boalt Hall School of Law, University of California,
8 Berkeley. After graduation, I spent fourteen years in federally funded legal services programs
9 before going into private practice in 1982. From 1977 to 1982, I was Director of Litigation for
10 California Rural Legal Assistance, Inc., a statewide legal services program with more than fifty
11 attorneys. Since April 1987, I have been a sole practitioner in the San Francisco Bay Area.
12 Martindale Hubbell rates my law firm "AV." I also have been selected as a Northern California
13 "Super Lawyer" in Appellate Law for 2005, 2006, 2007, and 2008. A copy of my Resume is
14 attached hereto as Exhibit A.

15 3. Since 1982, my practice has been a general civil litigation and appellate practice,
16 with an emphasis on cases and appeals involving court-awarded attorneys' fees. I have lectured and
17 written extensively on court-awarded attorneys' fees. I have been a member of the California State
18 Bar's Attorneys Fees Task Force and have testified before the State Bar Board of Governors and the
19 California Legislature on attorneys' fee issues. I am the author of California Attorney Fee Awards,
20 2d Ed. (Calif. Cont. Ed. of Bar 1994), and its 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002,
21 2003, 2004, 2005, 2006, and 2007 Supplements. This treatise has been cited by the California
22 appellate courts on more than 30 occasions. I also authored the 1984, 1985, 1987, 1988, 1990,
23 1991, 1992, and 1993 Supplements to its predecessor, CEB's California Attorney's Fees Award
24 Practice. In addition, I authored a federal manual on attorneys' fees entitled Attorneys' Fees: A
25 Legal Services Practice Manual, published by the Legal Services Corporation. I also co-authored
26 the chapter on "Attorney Fees" in Volume 2 of CEB's Wrongful Employment Termination
27 Practice, 2d Ed. (1997).

4. More than 90% of my practice is devoted to issues involving court-awarded attorney's fees. I have been counsel in over 140 attorneys' fee applications in state and federal courts, primarily representing other attorneys. I also have briefed and argued more than 40 appeals, at least 25 of which have involved attorneys' fees issues. In the past five years, I have successfully handled four cases in the California Supreme Court involving court-awarded attorneys' fees: (1) Delaney v. Baker (1999) 20 Cal. 4th 23, which held that heightened remedies, including attorneys' fees, are available in suits against nursing homes under California's Elder Abuse Act; (2) Ketchum v. Moses (2001) 24 Cal. 4th 1122, which held, *inter alia*, that contingent risk multipliers remain available under California attorney fee law, despite the United States Supreme Court's contrary ruling on federal law (note that in *Ketchum*, I was primary appellate counsel in the Court of Appeal and "second chair" in the Supreme Court); (3) Flannery v. Prentice (2001) 26 Cal. 4th 572, which held that in the absence of an agreement to the contrary, statutory attorneys' fees belong to the attorney whose services they are based upon; and (4) Graham v. DaimlerChrysler Corp. (2004) 34 Cal. 4th 553, which I handled, along with trial counsel, in both the Court of Appeal and Supreme Court. I also successfully represented the plaintiffs in a previous attorneys' fee decision in the California Supreme Court, Maria P. v. Riles (1987) 43 Cal.3d 1281

5. I have been retained as an expert witness on attorneys' fee issues on at least 25 occasions, on behalf of both fee claimants and those opposing fee applications. On at least 10 occasions, I have been qualified as an expert on attorneys' fees in judicial proceedings and arbitrations. I also have served as an arbitrator and mediator of attorney fee issues.

6. The 2008 rate for my services is \$550 per hour, which is the rate I charge new market-rate paying clients for my services. My hourly rates have been paid by numerous clients and found reasonable by numerous courts. This rate is significantly below the market for attorneys of similar skill, reputation and experience. Most recently, my 2007 rate was found reasonable in five different cases: Graham v. DaimlerChrysler, Los Angeles County Superior Court No. BC215624, Fee Order filed December 10, 2007; Moore v. Bank of America, S.D.Cal. No. 03cv00520, Fee Order filed January 7, 2008; Denenberg v. CalTrans, San Diego County Superior Court No. GIC 836582, Fee Order filed January 11, 2008; Naidu v. California Public Utilities

Commission, San Francisco Superior Court No. CGC-05-444782, Order Awarding Attorneys' Fees, filed September 27, 2007; and Marin v. Costco Wholesale Corp., Alameda County Superior Court No. RG 04-150447, Order Granting Motion of Plaintiff for Attorneys' Fees and Costs, filed April 17, 2007. Both my 2006 rate of \$525 per hour and my 2005 rate of \$495 per hour were found reasonable by United States District Judge Thelton Henderson in Coles, et al. v. City of Oakland et al., N.D. Cal No. C03-2961 the Order Granting in Part and Denying in Part Plaintiff's Motions for Attorney's Fees and Costs, filed January 4, 2007. My 2005 hourly rate of \$495 per hour also was found reasonable by United States District Judge Ronald M. Whyte in Miller v. Vicorp Restaurants (N.D. Cal. 2006) 2006 U.S. Dist. LEXIS 2210 and 10112, and by Judge Patrick J. Zika of the Alameda County Superior Court in Kotla v. Regents of Univ. of Calif., Alameda Superior Court No. V-014799-8, Fee Order filed September 14, 2005. My 2004 hourly rate of \$475 per hour was found reasonable by Judge John J. Golden, retired, in Sierra Club v. Placer County, Placer County Superior Court No. SCV-12789, Order Awarding Attorney Fees filed March 9, 2005, and in Environmental Protection Information Center et al v. California Dept. of Forestry and Fire Prot. et al. (Pacific Lumber Co., Real Party in Interest), Humboldt County Superior Court No. CV990445, Order Awarding Attorney Fees filed September 24, 2004. It also was found reasonable in Jordan v. Dept. of Motor Vehicles, JAMS Ref. No. 1100040574, Arbitration Decision and Award dated April 14, 2004, and the federal government conceded it was reasonable in an on-going Consent Decree enforcement case. My 2003 hourly rate of \$450 per hour was found reasonable by Judge Robert B. Freedman in Chopra et al. v. ADVO, Inc., Alameda County Superior Court No. CH221306-2, by Judge Richard L. Gilbert (retired), serving as Arbitrator in Planning and Conservation League v. Department of Water Resources, Sacramento Superior Court No. 95ASCS03216, and by Judge Michael S. Fields in Sanchez, et al. v. Sea Mist Farms, LLC, et al., Monterey County Superior Court No. M56954.

7. I am frequently called upon to opine about the reasonableness of hourly rates, and my declarations on that issue have been cited favorably by numerous courts. Much of the extensive evidence I have obtained on this issue is set forth below.

8. Through my writing and practice, I have become familiar with the market rates charged by attorneys in California and elsewhere. This familiarity has been obtained in several ways: (1) by handling attorneys' fee litigation; (2) by discussing fees with other attorneys; (3) by obtaining declarations regarding prevailing market rates in cases in which I represent attorneys seeking fees; and (4) by reviewing attorneys' fee applications and awards in other cases, as well as surveys and articles on attorney's fees in the legal newspapers and treatises.

9. I am familiar with the outstanding skills and reputations of the lawyers at Goldstein, Demchak, Baller, Borgen & Dardarian ("GDBBD") and Rudy, Exelrod & Zieff LLP ("REZ"), who I understand are *de facto* lead counsel in this case. Both firms are among the highest regarded private firms practicing complex litigation on behalf of plaintiffs in the country, particularly in the areas of employment discrimination and wage and hour litigation. I understand that Plaintiffs' counsel are requesting an award of attorneys' fees at the following rates:

<u>Name</u>	<u>Grad. Year</u>	<u>Billing Rate</u>
Alan B. Exelrod	1968	\$700
Steven G. Zieff	1978	\$700
David Borgen	1981	\$625
Laura L. Ho	1994	\$500
David A. Lowe	1995	\$500
Joseph E. Jaramillo	1995	\$465
Patrice L. Goldman	1989	\$450
Kenneth J. Sugarman	1997	\$430
Holly Herndon	1998	\$430
Enrique Martinez	2000	\$420
Heather Mills	2001	\$395
John T. Mullan	2002	\$395
Jessie Beckett-McWalter	2004	\$320
James P. Kan	2005	\$305
M. Adrienne	2005	\$305

De Castro

REZ Law Clerks	\$200
GDBBD Senior Paralegals	\$195
GDBBD Paralegals	\$135-\$160
GDBBD Case Clerks	\$110

10. In my opinion, all of these rates claimed by Plaintiffs' counsel in this case are well within the range of market rates charged by attorneys of equivalent experience, skill, and expertise -- specifically private firms with great expertise in handling and trying complex class actions on behalf of employees against large employers -- in California, and specifically in the San Francisco, Los Angeles, and San Diego markets.

11. I am also familiar with the skills and experience of Plaintiffs' original counsel in this case, the Law Office of Terry J. Chapko, and have been informed as to skills and experience of the law firm of Bohm, Matsen, Kegel & Aguilera LLP ("BMKA"). Both firms have extensive experience in employment and wage and hour matters, including complex litigation and class actions. I understand that these two firms litigated this case through class certification and then associated GDBBD and REZ due to the large amount of staffing and resources necessary to represent a class of over 120,000 class members against a well-financed defense, including defense lawyers with the resources of a large international firm.

12. I understand that Terry J. Chapko, a 1995 law school graduate, is requesting an award of attorneys' fees at the rate of \$400.00 per hour. In my opinion this is well within the range of market rates charged by attorneys of equivalent experience, skill, and expertise in the San Diego market.

13. I understand that BMKA is requesting an award of attorneys' fees at the following rates:

<u>Name</u>	<u>Grad. Year</u>	<u>Billing Rate</u>
James G. Bohm	1987	\$500
Craig A. Kegel	1987	\$500
A. Eric Aguilera	1997	\$425

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Christian E. Bredson	2005	\$285
Jacob E. Godard	2005	\$285
BMKA Paralegals		\$125-\$150

In my opinion these rates are well within the range of market rates charged by attorneys of equivalent experience, skill, and expertise in the Orange County market.

14. Specifically, the reasonableness of the hourly rates claimed by Plaintiffs' counsel is shown by the following facts I have gathered regarding the non-contingent rates charged by attorneys for litigation services in the trial and appellate courts:

a. Defendant's counsel's rates. Plaintiffs' counsel's rates are within the range of rates requested by Defendant's counsel in fee requests in other matters. Defendant was represented by Akin Gump Strauss Hauer & Feld ("Akin"), an international law firm headquartered in Washington D.C. Defendant was represented by attorneys from Akin's Washington D.C. and Los Angeles offices. The Daily Report publishes an hourly rate index that shows the billing rates of individual timekeepers as listed in fee requests of cases filed in U.S. Bankruptcy Court and other federal courts. This index is accessible and searchable on the internet at www.dailyreportonline.com. The Daily Report lists a 2006 billing rate for Edward P. Lazarus, a 1987 law school graduate from Akin's Los Angeles office of \$620 per hour; a 2006 billing rate of \$635 per hour for 1969 graduate G. Philip Nowak of Akin's Washington D.C. office; and a 2006 billing rate of \$650 per hour for 1979 graduate Richard L. Wyatt, Jr., of Akin's Washington D.C. office. Akin's attorneys' graduation years are available on Akin's website at <http://www.akingump.com>. While these attorneys did not represent defendant in this case, their experience level is similar to attorneys who did, including Joel Cohn, a 1976 law school graduate from Akin's Washington D.C. office; Catherine Conway, a 1978 graduate from Akin's Los Angeles office; and Daniel Nash, a 1983 graduate from Akin's Washington D.C. office. It is reasonable to infer that the billing rates of these attorneys are similar to those of Mr. Lazarus and Mr. Wyatt.

b. Rates found reasonable in other cases. Plaintiffs' counsel's rates are within the range of the following rates awarded by the courts in the following cases:

2008 Rates:

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(1) Craft v. County of San Bernadino, U.S. District Court, Central District of California, Order Awarding Attorney's Fees and Costs, filed April 1, 2008, in which Judge Stephen G. Larson found the following hourly rates reasonable in a case involving violation of Constitutional rights:

<u>Years of Experience</u>	<u>Rate</u>
38	\$725
2	275
Law Clerks	200
Paralegals	110 - 225

2007 Rates:

(1) Marin v. Costco Wholesale Corp., Alameda County Superior Court No. RG 04-150447, Order Granting Motion of Plaintiff for Attorneys' Fees and Costs, filed April 17, 2007, in which Judge Bonnie Sabraw found the following hourly rates reasonable in a wage and hour action under California Labor Code § 1194:

<u>Years of Experience</u>	<u>Rate</u>
38	\$535
15	525
14	450-455
11	450
10	350
5	350
3	295

2006 Rates:

(1) Marin v. Costco Wholesale Corp., Alameda County Superior Court No. RG 04-150447, Order Granting Motion of Plaintiff for Attorneys' Fees and Costs, filed April 17, 2007, in which Judge Bonnie Sabraw found the following 2006 rates reasonable:

<u>Years of Experience</u>	<u>Rate</u>
14	\$455
13	425
10	425
9	350
4	350
2	235

(2) Coles, et al. v. City of Oakland et al., N.D. Cal. No. C-03-2961 TEH (Order Granting in Part and Denying in Part Plaintiffs' Motions for Attorneys' Fees and Costs, filed January 4, 2007), in which the court found the following 2006 rates reasonable in a case involving violation of Constitutional rights:

<u>Years of Experience</u>	<u>Rate</u>
37	\$525
15	420
11	400

(3) Turner v. Association of American Medical Colleges, Alameda County Superior Court No. RG04-166148 (Order Granting Motion for Attorneys' Fees and Costs, filed December 27, 2006), in which the court found the following 2006 rates reasonable in a case involving disability rights claims under California law:

<u>Years of Experience</u>	<u>Rate</u>
45	\$645
21	525
19	495
15	455
11	425
7	325
5	325

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4	275
3	255
2	235
1	235
Law Clerks	\$125-150
Paralegals	\$125

(4) Waul v. State Farm Ins. Co., San Francisco Superior Court No. CGC 02-412248, Award of Attorney's Fees Following Arbitration, filed June 20, 2006, in which Judge James J. McBride awarded plaintiff's counsel the following rates in a consumer protection action brought pursuant to the California Unfair Competition Law, Business & Professions Code § 17200:

<u>Years of Experience</u>	<u>Rate</u>
44	\$625
9	375
Senior Paralegal	\$185

2005 Rates:

(1) Coles, et al. v. City of Oakland et al., N.D. Cal. No. C-03-2961 TEH (Order Granting in Part and Denying in Part Plaintiffs' Motions for Attorneys' Fees and Costs, filed January 4, 2007), in which the court found the following 2005 rates reasonable:

<u>Years of Experience</u>	<u>Rate</u>
36	\$495
14	400
10	380

(2) Kotla v. Regents of Univ. of Calif., Alameda County Superior Court No. V 014799-8, Order Granting Attorneys' Fees and Costs filed September 14, 2005, in which Judge Patrick Zika awarded 2005 rates as follows in a wrongful employment termination action:

<u>Years of Experience</u>	<u>Rate</u>
9	

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43	\$600
36	495
34	495

(3) Krumme v. Mercury Ins. Co., San Francisco Superior Court No. 313367 (Order Awarding Attorney's Fees on Appeal and Post-Appeal Pursuant to Code of Civil Procedure Section 1021.5, filed July 12, 2005), in which Judge Robert Dondero awarded plaintiff's counsel the following hourly rates in a consumer protection action to enforce the California Unfair Competition Law:

<u>Years of Experience</u>	<u>Rate</u>
22-24	\$490
19	475
11	375
3	275
Paralegal	\$125

(4) Miller v. Vicorp Restaurants, 2006 U.S. Dist. LEXIS 2210, 10112 (N.D. Cal. 2006), in which Judge Ronald M. Whyte awarded plaintiff's counsel the following rates in an individual employment discrimination action under the California Fair Employment & Housing Act:

<u>Years of Experience</u>	<u>Rate</u>
36	\$495
29	450
7	250
Paralegals	\$115-130

c. Rate Information from Surveys and Other Cases. I have reviewed numerous declarations and depositions filed in other cases, as well as various surveys of legal rates. These sources show the hourly rates for litigation undertaken on a non-contingent basis by the following California law firms, listed in alphabetical order:

Altshuler Berzon LLP

2008 Rates

<u>Graduation Year</u>	<u>Rate</u>
1977	\$750
1983	750
1985	700
1994	590
1998	500
2001	420
2005	320
Legal Assistants	\$150-\$200

2007 Rates:

<u>Years of Experience</u>	<u>Rate</u>
23	\$700
15	550
8	410
5	325
Paralegals	\$155-190

Chavez & Gertler

2006 Rates:

<u>Years of Experience</u>		<u>Rate</u>
Partners	25	\$535
	27	515
	16	495
	14	425
Associates	16	\$395

	14	425
	13	395
Paralegals		\$175
Legal Assistants		\$125

2005 Rates:

<u>Years of Experience</u>		<u>Rate</u>
Partners	26	\$515
Associates	16	\$475
	10	395

2004 Rates:

<u>Years of Experience</u>		<u>Rate</u>
Partners	25	\$495
	27	485
	21	485
Associates	15	\$445
	14	385
	16	385
	13	385
	12	375
	9	335
Paralegals		\$155-175
Legal Assistants		\$105

2003 Rates:

<u>Years of Experience</u>		<u>Rate</u>
Partners	24	\$485
	26	475

	20	465
Associates	14	\$425
	13	375
	15	35
	11	345
	8	305
	3	275
Paralegals		\$135-165
Legal Assistants		\$95

2002 Rates:

<u>Years of Experience</u>		<u>Rate</u>
Partners	23	\$465
	25	455
	19	425
Associates	13	\$385
	14	325
	31	295
	10	295
	7	275
Legal Assistants		\$85-140

Cooley Godward Kronish LLP

2006 Rates:

<u>Years of Experience</u>	<u>Rate</u>
Partners	\$425-795 (average \$539)
Associates	\$240-585 (average \$371)

2005 Rates:

<u>Years of Experience</u>	<u>Rate</u>
	13

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Partners	\$395-700 (average \$515)
Associates	\$215-550 (average \$350)

2003 Rates:

<u>Years of Experience</u>		<u>Rate</u>
Partners	30	\$700
	34	550
	20	450-485
	15	475
	20	425
	14	415
Associates	5	\$410
	3	270-395
	7	385
	5	325
	2	230-270
	1	215-240
Legal Assistants		\$115-185

Fenwick & West

2006 Rates:

<u>Years of Experience</u>		<u>Rate</u>
Partners		\$465-750 (average \$575)
Associates		\$245-475 (average \$355)
	8	465
	7	450
	6	425

	5	400
	4	360
	3	320
	2	285
	1	245

2005 Rates:

<u>Years of Experience</u>	<u>Rate</u>
Partners	\$450-725 (average \$540)
Associates	\$235-440 (average \$345)

Howard, Rice, Nemerovski, Canady, Falk & Rabkin

2006 Rates:

<u>Years of Experience</u>	<u>Rate</u>
Partners	\$440-750
Associates	\$250-420

Kirkland & Ellis

2005 Rates:

<u>Years of Experience</u>		<u>Rate</u>
Partners	24	\$725
	12	435

Knobb, Martens, Olson & Bear

2006 Rates:

<u>Years of Experience</u>	<u>Rate</u>
Partners	\$335-625
Associates	\$205-340

Levy, Ram & Olson

2006 Rates:

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<u>Years of Experience</u>	<u>Rate</u>
24	\$590

2005 Rates:

<u>Years of Experience</u>	<u>Rate</u>
25	\$490
23	490
12	375
4	275

Lewis, Feinberg, Lee, Renaker & Jackson

2007 Rates:

<u>Years of Experience</u>		<u>Rate</u>
Partner	32	\$700
	19	575
	11	525
	9	500
Associates	4	330
	2	290
Law Clerks		\$200
Paralegal		\$150

Lieff, Cabraser, Heimann & Bernstein

2007 Rates:

<u>Years of Experience</u>		<u>Rate</u>
Partners	33	\$675
	23	700
	15	550
	14	575

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	10	450
Associates	6	\$390
	4	350
Law Clerk		\$165-295
Paralegal		\$115-250

2006 Rates:

<u>Years of Experience</u>		<u>Rate</u>
Partners	19	\$625
	17	625
	10	450
Associates	10	\$400
	8	360
	4	340
	2	285

2005 Rates:

<u>Years of Experience</u>	<u>Rate</u>
35	\$650
22	575
5	305

2004 Rates:

<u>Years of Experience</u>	<u>Rate</u>
35	\$490
22	460
5	290

2003 Rates:

<u>Years of Experience</u>	<u>Rate</u>
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Partners	42	\$600
	32	600
	30	525
	29	575
	26	600
	25	485
	21	525
	17	485
	16	485
	15	430-475
	13	430-450
	12	375
	11	425-430
Associates	8	\$310-315
	6	300-305
	5	295
	4	285-295
	3	275
	2	250

Loeb & Loeb

2006 Rates:

<u>Years of Experience</u>	<u>Rate</u>
Partners	\$425-825
Associates	\$215-475

Milbank, Tweed, Hadley & McCloy

2002 Rates:

<u>Years of Experience</u>	<u>Rate</u>
	18

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25	\$595
15	520
10	500
9	465
6	425
5	425
4	400
2	350
1	325
Summer Associates	\$185
Legal Assistants	\$110-145
Case Clerk	\$40

Morgan, Lewis & Bockius, LLP

2006 Rates:

<u>Years of Experience</u>	<u>Rate</u>
Partners	\$375-800
Associates	200-550

2004 Rates:

<u>Years of Experience</u>	<u>Rate</u>
24	\$600
13	470
6	335
3	230

Morrison & Foerster

2007 Rates:

<u>Years of Experience</u>	<u>Rate</u>
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44	\$675
11	550
8	520
6	475

Paul, Hastings, Janofsky & Walker

2005 Rates:

<u>Years of Experience</u>	<u>Rate</u>
35	\$595

Pillsbury Winthrop Shaw Pittman, LLP

2006 Rates:

<u>Years of Experience</u>	<u>Rate</u>
32	\$740
24	575
2	365
1	265
Paralegal	125-200

2004 Rates:

<u>Years of Experience</u>	<u>Rate</u>
35	\$490
22	460
5	290

Reed Smith

2006 Rates:

<u>Years of Experience</u>	<u>Rate</u>
Partners	\$305-725 (average \$492)

Associates	\$170-630 (average \$309)
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Rosen, Bien & Galvan

2007 Rates:

<u>Years of Experience</u>		<u>Rate</u>
Partners	45	\$700
	27	590
	10	400
Associates	24	\$435
	23	400
	14	400
	10	390
	7	350
	6	340
	5	325
	4	295
	3	280
	2	260
Paralegals		\$160-190
Litigation Support/Paralegal		\$110-150
Clerks		
Law Clerks/Students		\$160
Word Processing		\$60

2006 Rates:

<u>Years of Experience</u>		<u>Rate</u>
Partners	44	\$635
	26	535

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	24	485
	9	390
Associates	23	\$425
	22	390
	13	385
	9	375
	6	330
	5	315
	4	285
	3	270

2005 Rates:

<u>Years of Experience</u>		<u>Rate</u>
Partners	43	\$625
	25	525
	23	475
Associates	22	\$435
	12	375
	8	350
	6	300
	4	275
	3	235

2004 Rates:

<u>Years of Experience</u>		<u>Rate</u>
Partners	42	\$600
	24	490
	22	450
Associates	11	\$350

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	7	325
	4	285
	3	265
	2	220
Paralegals		\$140-160
Paralegal Clerks		\$95

2003 Rates:

<u>Years of Experience</u>		<u>Rate</u>
Partners	41	\$575
	23	475
	21	425
Associates	20	\$350
	10	325
	6	300
	4	270
	3	245
	3	245
	2	225
Law Clerks		\$140
Paralegals		\$100-160
Paralegal Clerks		\$95

2002 Rates:

<u>Years of Experience</u>		<u>Rate</u>
Partners	40	\$700
	22	590
	20	400
Associates	19	\$435

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	9	400
	5	400
	3	390
	2	350
	1	340
Law Clerks		\$140
Paralegals		\$100-150
Paralegal Clerks		\$95

Schneider & Wallace

2007 Rates:

<u>Years of Experience</u>	<u>Rate</u>
17	\$525
14	450
12	450
3	295
Paralegals	\$125

Sheppard, Mullin, Richter & Hampton

2006 Rates:

<u>Years of Experience</u>	<u>Rate</u>
Partners	\$415-650 (average \$504) (median \$495)
Associates	\$250-410 (average \$342) (median \$330)
Firmwide	(average \$419) (median \$420)

Skadden, Arps, Slate, Meagher & Flom, LLP

2005 Rates:

<u>Years of Experience</u>		<u>Rate</u>
Partners	13	\$556
Associates	4	\$375
	3	\$335

2004 Rates:

<u>Years of Experience</u>		<u>Rate</u>
28		\$675
8		435
7		345
4		310
Summer Associates		\$160
Legal Assistants		\$110-195

Steefel, Levitt, and Weiss

2004 Rates:

<u>Years of Experience</u>		<u>Rate</u>
35		\$490
22		460
5		290

Sturdevant Law Firm (formerly Sturdevant & Sturdevant)

2007 Rates:

<u>Years of Experience</u>		<u>Rate</u>
35		\$550

2006 Rates:

<u>Years of Experience</u>	<u>Rate</u>
34	\$510

2002 Rates:

<u>Years of Experience</u>	<u>Rate</u>
30	\$495

15. The hourly rates set forth above pertain largely to law firms headquartered in the San Francisco Bay Area and Los Angeles. To the extent those law firms handle cases in other jurisdictions, like San Diego, they almost always charge the same rates that they do for litigation in the Bay Area. To the extent Plaintiffs' claim is based upon San Diego rates, however, I also am of the opinion that they are in line with the rates charged by lawyers of comparable skill, experience, and reputation for comparable work, *i.e.*, complex representative litigation in San Diego. I base that opinion on the following facts:

a. Cohelan & Khoury, a San Diego law firm that specializes in class action case and has been certified as class counsel on numerous occasions in state and federal courts, charges 2008 rates that include the following: \$700 per hour for a partner who graduated from law school in 1974; \$650 per hour for a partner who graduated from law school in 1970; \$600 per hour for a partner who graduate from law school in 1984; \$500 per hour for a partner who graduated from law school in 1986; \$400 per hour for an associate who graduated from law school in 1995; \$325 per hour for an associate who graduated from law school in 2001; and \$250 per hour for an associate who graduated from law school in 2003.

b. In 2006, Luce, Forward, Hamilton & Scripps, a San Diego law firm that handles complex litigation, charged partner rates of from \$320 to \$725 per hour, and associate rates of from \$205 to \$425 per hour. *See Exhibit B.*

c. In 2004, Gray Cary Ware & Freidenrich, another San Diego law firm that does federal court litigation, charged partner rates of from \$310 to \$695 per hour, and associate rates of from \$215 to \$495 per hour. *See Exhibit C.*

1 d. In a report filed with the California Public Utilities Commission (attached as
2 Exhibit D), the San Diego Gas & Electric Co. reported that in 2003, it hired outside counsel at rates of
3 from \$477-625 per hour for partners with 13 or more years experience, \$435 per hour for partners with
4 8-12 years of practice, and \$239-425 per hour for associate attorneys with up to 7 years of practice.

5 16. The non-2008 rates set forth above can reasonably be expected to have increased in
6 2008 in line with market trends. My research regarding attorneys' fees in California has indicated a
7 consistent increase in fees over the last several years. For example, average partner rates at Fenwick &
8 West increased 6.4% between 2005 and 2006. Similar increases seem to have been taken by several
9 firms in 2007 and 2008. Virtually every other firm whose rates I am aware of also increased their rates
10 over these periods.

11 17. In my experience, fee awards are almost always determined based on current rates, i.e.,
12 the attorney's rate at the time a motion for fees is made, rather than the historical rate at the time the
13 work was performed. This is a common and accepted practice to compensate attorneys for the delay in
14 being paid. When attorneys are compensated at historical rates, they are entitled to adjustments for
15 delay in payment on those amounts that will bring their fees to current value; this makes the fee-
16 determination process unduly complicated and generally leads to the same result as using current rates
17 for all work.

18 18. The hourly rates set forth above are those charged where full payment is expected
19 promptly upon the rendition of the billing and without consideration of factors other than hours and
20 rates. If any substantial part of the payment were to be deferred for any substantial period of time, for
21 example, or if payment were to be contingent upon outcome or any other factor, the fee arrangement
22 would be adjusted accordingly to compensate the attorneys for those factors.

23 19. I have reviewed the billing practices of hundreds of attorneys in California. Based on
24 my experience and knowledge of billing practices among California lawyers, I can state that it is the
25 common practice of local firms to bill their clients for out-of-pocket expenses incurred in litigation,
26 such as expert witness fees, travel, copying, telephone long-distance charges, postage and messenger
27 fees, computerized research costs, and the like.

20. The expense and risk of public interest litigation, has not diminished over the years; to the contrary, these cases are in many ways more difficult than ever. As a result, fewer and fewer attorneys and firms are willing to take on such litigation, and the few who are willing to do so can only continue if their fee awards reflect true market value.

21. In my experience, attorneys who litigate on a contingent basis expect to receive significantly higher effective hourly rates in cases where compensation is contingent on success, particularly in hard fought cases where the result is uncertain. In my opinion, this does not result in any "windfall" or undue "bonus" for plaintiff's counsel. Attorneys who assume representation of plaintiffs on a purely contingent basis in public interest cases are entitled to receive fees equivalent to those paid in the private market. In the legal marketplace, a lawyer who assumes a significant financial risk on behalf of a client rightfully expects that his or her compensation will be significantly greater than if no risk was involved (*i.e.*, if the client paid the bill on a monthly basis). In fact, an expert economist who testified in two cases in which I was involved opined that, based on a statistical risk analysis, attorneys who take cases on a contingent basis should receive from three to six times the market rates paid to attorneys on a non-contingent basis. Adjusting court-awarded fees upward in contingent fee cases to reflect the risk of loss simply makes them competitive in the legal marketplace, helping to ensure that meritorious cases will be brought to enforce important public interest policies and that clients who have meritorious claims will be more likely to obtain qualified counsel. Based on similar considerations, numerous trial courts have determined that lodestar enhancements for contingent risk are required to arrive at a reasonable attorney's fee for appellate services.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Berkeley, California on April 22, 2008.


RICHARD M. PEARL